IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.9 OF 2007
IN
FIRST APPEAL NO.2046 OF 2005

Capt. Mohan M. Deshmukh. ..Petitioner.
Vs.
ICICI Bank Ltd. Pune and ors. ..Respondents.

Mr. A.V.Anturkar i/by Mrs. Vinita V. Bakre Shastry for the Petitioner.

Mr. Ashish Kamat with Mr. Nikhil Rajani i/by M/s. V. Deshpande & Co. for the Respondents.

CORAM : A.M.KHANWILKAR,J.
DATED : July 12, 2007.

P.C.

1. Heard counsel for the parties.

2. By this petition, the original appellant seeks review of the Judgment and Order dated 27.2.2006 passed in First Appeal No.2046 of 2005. The review is sought essentially on two grounds. Firstly, that the court proceeded to rely on the evidence of the appellant (cross examination) and has reproduced the same in Paragraph-3 of the Judgment under review, which is incorrect position. In Paragraph-3 of the Judgment the relevant portion of the evidence has been reproduced, which reads thus:

> "On 10.3.1989 the bank had sanctioned a loan of Rs.1,25,000/-. The rate of interest was 17.5%

p.a. at quarterly rest".

Now the certified copy of the entire evidence on record is produced which instead reads as follows:

"On 10.3.1989 the bank had sanctioned a loan of Rs.1,25,000/-. The rate of interest was 17.5% p.a. without quarterly rests".

. Relying on this factual position, the counsel for the appellant contended that error apparent on the face of the record has been committed by this court; and that being the basis of the conclusion reached by this court, the judgment under review deserves to be recalled and the appeal be considered afresh.

3. I shall straight way deal with the first contention. Indeed, the counsel for the respondents is not disputing the correctness of the abovesaid stand taken regarding the incorrect reproduction of evidence of the appellant. That however, does not take the matter any further for the Appellant. For, the said evidence was not the sole basis on which I proceeded to decide the matter against the Appellant. This aspect was placed as the last point for consideration, to record the finding against the Appellant. In the first place, I have found that the documentary evidence in the

shape of Exh.26 which is a promissory note executed by the appellant himself, the contents of the said document have not been disputed. There is no cross examination at the instance of the appellant to challenge the said document. The cross examination however, is with reference to documents at Exhs. 28 and 32. This is the first and foremost consideration to deal with the matter in issue against the appellant. Indeed, I have also adverted to the relevant portion of the evidence in Paragraph 3 of the judgment, as aforesaid. Even if the latter reason was to be ignored, being founded on incorrect assumption that will not be of any avail to the appellant, unless the appellant was to succeed in persuading the court to reverse the former finding recorded in respect of Exh.26; namely, the promissory note, which reinforces the obligation of the appellant to pay interest compound at the rate of 17.5%p.a. at quarterly rests. No other argument will be of any help to the appellant.

4. The second argument canvassed before this court is that, this court did not advert to the crucial documents such as Exh.29 and 30 which were already part of the record. Those documents, in particular, Exh.30 clearly indicates that the appellant had agreed to pay interest at the rate of 7.5% over the banking rate with minimum of 17.5% per annum. None of these documents

would require the appellant to pay interest at the rate of 17.5% at quarterly rests. The argument seems to be attractive but does not answer the first issue decided against the appellant with reference to document Exh.26 in the judgment under review.

5. To get over this position, the counsel for the appellant has pressed into service decision of our High Court reported in **1999(2) B.C.J. Page 76 in the case of Sangli Bank Ltd. Vs. Kanishka Investments Pvt. Ltd and others,** in particular, Paragraphs 47 and 49 thereof. Relying on the observations in this decision, it was contended that the promissory note cannot be made basis to answer the issue in favour of the bank whose claim in the suit was essentially on the basis of loan agreement. Terms of the loan agreement nowhere specify obligation of the appellant to pay interest at the rate of 17.5 % p.a. at quarterly rests. Even this argument will have to be rejected. For, I am in agreement with the submissions of the counsel for the respondents that the exposition in the reported case pressed into service is in the fact situation of that case. In that case, the court in the first place found as of fact that except the loan agreement all other agreements executed by the defendants were blank documents. On that finding, the court proceeded to exclude those documents from consideration. In Paragraph 47 of this reported

decision, court went on to observe that different documents namely promissory note, Letter of security, Term Loan Agreement etc. are concerned, the rate of interest quoted is "quarterly rests" whatsoever be the rate of interest. As the court proceeded to exclude all other documents except the loan agreement from consideration, the point was answered against the bank in that case. The finding of fact recorded in this decision is that the promissory note did not specifically record any rate of interest to be paid by the appellant . On the other hand, in the present case the Promissory note Exh.26 which is admitted by the appellant clearly specifies the rate of interest. It is not the case of the appellant that the rate of interest specified therein has been incorporated at a later point of time after the execution of the said document, as was the case in Kanishka Investments (supra). Moreover, in the present case, it is not the case of the Appellant that his signatures were taken on blank or unfilled Promissory note or other relevant documents, which was the case in the reported decision. On this reasoning, the reported Judgment pressed into service will be of no avail.

6. Besides, I find substance in the argument of the respondents that the documents Exhs. 29 and 30 do not mention that the bank could not have charged interest

exceeding 17.5% per annum with quarterly rests. That commitment flows from the documents executed by the Appellant, in particular, Exh.26, being the promissory note.

7. I am also in agreement with the contention of the respondents that all these contentions were available to the appellant to be argued at the time of hearing of the appeal. Those contentions were not raised at the appropriate stage, therefore, cannot be the basis for review of the order on the ground of non consideration. In any case, I have placed the contentions of the appellant on record. I refrain to make any further observation in this behalf.

8. This review application is dismissed, being devoid of merits.

(A.M.KHANWILKAR, J.)